

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAEIL RO,

Plaintiff,

v.

EVEREST INDEMNITY INSURANCE
COMPANY, a foreign insurance company;
BROWN & BROWN PROGRAM
INSURANCE SERVICES, INC., a California
corporation d/b/a LANCER CLAIMS
SERVICES,

Defendants.

No.: 2:16-cv-664

COURT ORDERED RESPONSE BY
COUNSEL FOR EVEREST INDEMNITY
INSURANCE COMPANY

This Court issued an order¹ consolidating and merging this lawsuit with another lawsuit transferred to this Court from the U.S. District Court for the District of Minnesota (the "Minnesota Action").² In the order, the Court directed defense counsel for Everest Indemnity Insurance Company to file a memorandum with the Court.

Both I and the other counsel representing Everest, recognize that we misstated the basis upon which the Minnesota Action was transferred to this Court. That mistake was

¹ Order Granting Plaintiff's Motion to Consolidate and Merging Cases (Dkt No. 32).

² Case No. C16-1170-RSL.

1 unintentional. As counsel for Everest, we regret the mistake and apologize to the Court.

2 In the Minnesota Action, Daeil Ro argued that the court should: (1) dismiss the case
3 for lack of personal jurisdiction, (2) dismiss or transfer the case as an exception to the first-
4 filed doctrine, (3) dismiss or transfer the case for improper venue pursuant to 28 U.S.C. §
5 1391, or (4) transfer the case pursuant to 28 U.S.C. § 1404(a). The Minnesota court declined
6 to dismiss the action and instead transferred it to this District as an exception to the first-filed
7 doctrine. The Minnesota court alternatively concluded that transfer would be appropriate
8 under 28 U.S.C. § 1406(a) because Minnesota was an improper venue under § 1391. The
9 court did not to reach the issue of whether transfer was appropriate under § 1404(a).

10 The transfer order and other pleadings from the Minnesota Action were transferred to
11 this District and docketed. After I reviewed the Minnesota court's transfer order, Ro moved
12 to consolidate and merge his action with the transferred Minnesota Action. Another law
13 firm, which represented Everest in the Minnesota Action, assisted me and circulated a first
14 draft of a brief that consented to consolidation and conditionally opposed Ro's motion to
15 merge the two cases.

16 Everest's counsel in Minnesota had experience with other cases that involved the
17 distinction between dismissal for lack of personal jurisdiction and transfer of an action.
18 Transferring a case—rather than dismissing it—can impact the appropriate choice-of-law
19 analysis and, in focusing on this distinction, rather than any significance between the
20 different grounds for transfer, the initial draft of the brief incorrectly stated that the
21 Minnesota Action had been transferred under § 1404(a). The Minnesota court, however, had
22 not decided Ro's request for a § 1404(a) transfer and had instead transferred the case as an
23 exception to the first-filed doctrine. Alternatively, the court stated that it would have
24 transferred the case under § 1406(a). The initial draft of the brief focused on the distinction
25 between the act of dismissal and transfer and, mistakenly, misstated the basis for the transfer.

26 At the time I reviewed the draft brief, I recalled that the Minnesota court had declined

1 to dismiss the case and instead transferred it, but I did not recall that this was done for
2 reasons other than the § 1404(a) transfer Ro sought. Further, at that time, I was not aware
3 that the distinction could affect the choice-of-law discussion we included in Everest's brief.
4 Because I did not go back and reread the Minnesota court's transfer order, the opposition
5 brief I filed for Everest inadvertently mischaracterized it.

6 Defense counsel take responsibility for the mistake in Everest's brief and note that
7 this was counsel's mistake, not Everest's. By submitting the brief, defense counsel did not
8 intend to deceive the Court or misrepresent the Minnesota court's order. I sincerely
9 apologize to the Court for failing to confirm all of the assertions in Everest's brief before
10 submitting it and assure the Court that a similar error will not occur in the future.

11 DATED: September 16, 2016.

12 BULLIVANT HOUSER BAILEY PC

13
14 By /s/ Daniel R. Bentson

Daniel R. Bentson, WSBA #36825

E-mail: dan.bentson@bullivant.com

15
16 Attorneys for Defendants Everest Indemnity
Insurance Company
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2016, I electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the person(s) listed below:

Gregory L. Harper
Charles K. Davis
Thomas M. Williams
Harper Hayes PLLC
One Union Square
600 University Street, Suite 2420
Seattle, Washington 98101
Telephone: 206.340.8010
Email: greg@harperhayes.com
cdavis@harperhayes.com
twilliams@harperhayes.com

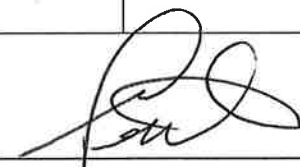
Attorneys for Plaintiff

James T. Derrig
James T. Derrig Attorney at Law PLLC
14419 Greenwood Ave N., Ste. A-372
Seattle, WA 98133
Telephone: (206) 414-7228
Email: jim.derriglaw@me.com

Attorneys for Everest Indemnity Insurance Company

Keith A. Dotseth
Shawn M. Raiter
Larson & King LLP
30 E Seventh St., Ste. 2800
Saint Paul, MN 55101
Telephone: 651-312-6500
Email: kdotseth@larsonking.com
Email: sraiter@larsonking.com

Attorneys for Everest Indemnity Insurance Company



Genevieve Schmidt

4852-3430-8152.1